

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

Criminal No. 21-184

RODERICK KING

**GOVERNMENT’S MOTION *IN LIMINE* REGARDING APPLE, GOOGLE, AND PNC
BANK BUSINESS RECORDS**

AND NOW comes the United States of America, by its attorneys, Cindy K. Chung, United States Attorney for the Western District of Pennsylvania, and Jeffrey R. Bengel and Jonathan D. Lusty, Assistant United States Attorneys for said District, and hereby set forth the following in support of the Government’s *Motion in Limine* Regarding Apple, Google, and PNC Bank Business Records.

Though these records are self-authenticating under the Federal Rules of Evidence, the government also intends to present additional evidence linking the defendant to these records at trial.

Proposed exhibit 2 was received from Google, which provided a business records certification of authenticity dated December 17, 2020. *See* Exhibit A. Proposed exhibits 3, 4, 6, and 7 were also received from Google, which provided a business records certification of authenticity dated December 21, 2020. *See* Exhibit B. Proposed exhibit # 5 was received from Apple, which provided a business records certification of authenticity dated December 14, 2020. *See* Exhibit C. And proposed exhibit # 8 was received from PNC Bank, which provided a business records certification of authenticity dated January 28, 2021. *See* Exhibit D. These records have

been produced in discovery to the defendant. The records from Google, Apple, and PNC Bank have been produced to defendant in discovery.

Business records are admissible as an exception to the hearsay rule if the records were “made at or near the time by ... a person with knowledge, if kept in the ordinary course of a regularly conducted business activity, and if it was the regular practice of that business activity to make” the records. *See* Fed. R. Evid. 803(6); *United States v. Jimenez*, 513 F.3d 62, 78 (3d Cir. 2008). Such business records may be authenticated by introduction of an affidavit or certification from a custodian of records certifying that the record:

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) was kept in the course of a regularly conducted business activity; and

(C) was made by the regularly conducted activity as a regular practice.

Fed. R. Evid. 902(11); *United States v. Schwartz*, 315 Fed. Appx. 412 (3d Cir. 2009); *United States v. Adfehinti*, 510 F.3d 319, 324-28 (D.C. Cir. 2008). In addition, the proponent of the evidence must provide written notice of the intention to introduce it through a Rule 902(11) certification “to all adverse parties, and must make the record and declaration available for inspection sufficiency in advance of their offer into evidence to provide the adverse party with a fair opportunity to challenge them.” Fed. R. Evid. 902(11).

The government has provided notice of its intention through this written motion and the attached certifications. The defendant has been provided a copy of the certifications and records received from Google, Apple, and PNC Bank. To avoid unnecessary expense of time and judicial resources at trial, the government submits this motion.

Because the certified records meet the requirements for self-authentication under Rule 902(11) and admissibility under Rule 803(6), the Court should enter an order admitting these documents into evidence (and obviating the need for the government to call a records custodian for said records).

Respectfully submitted,

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ORDER

AND NOW, this ____ day of _____, 2022, upon consideration of the Government's Motion *in Limine*, it is hereby ORDERED:

The business records of Google, Apple, and PNC Bank are admitted pursuant to Federal Rules of Evidence 902(11) and 803(6).

HONORABLE CHRISTY CRISWELL WIEGAND
United States District Judge